

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL
RECEIVED

OCT 5 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:)

Revision of Part 22 of the)
Commission's Rules Governing)
the Public Mobile Services)

CC Docket No. 92-115

COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION

The United States Telephone Association (USTA) respectfully submits its comments in the above-referenced Notice of Proposed Rulemaking (Notice). USTA is the principal trade association of the exchange carrier industry. Its membership provides over 98 percent of the exchange carrier-provided local access lines in the U.S.

USTA agrees that revision of Part 22 of the Commission's rules is necessary. As the Commission correctly observes, significant changes in the provision of mobile services have occurred which should be addressed in the rules.¹ USTA will address specific proposed changes as presented in Appendix A and B of the Notice.

Section 22.99

The definition of Fill-In Transmitter should include a statement that the Reliable Service Area Contour (RSAC) and

¹ Notice at paragraphs 4-6.

0 + 10

interference contour of the fill-in transmitter do not extend beyond the contour of the existing authorized service area. The definition of In-Building Radiation Systems should specify that these systems radiate outside of the building, only on an incidental basis.

Section 22.105

The Commission should interpret §22.105(d)(1) as broadly as possible so that no party is unduly burdened by the requirement to submit microfiche in making emergency filings.

Section 22.108

The Commission should indicate that the information required by this section may be met by reference to an applicant's current Form 430 on file at the Commission. This would simplify the filing and relieve the administrative burden on both the Commission and the applicant.

Section 22.115(a)(2) and (a)(4)

An antenna structure drawing should be required for all proposed stations. Such a requirement is not burdensome for the applicant and will greatly assist with review of the proposal for coordination and interference determinations.

Further, as the Commission rewrites Part 22, it should ensure consistency with the rules promulgated by the Federal Aviation Administration.

Section 22.121

USTA believes that the Commission's proposed policy on termination of authorizations is particularly harsh and inflexible.² The Commission proposes to refuse to consider an application where an authorization has been automatically terminated for failure to commence service. This would not necessarily discourage warehousing, as a licensee could return an authorization for cancellation or initiate a major modification one day prior to expiration of the authorization and avoid the penalty. However, this proposal could unfairly penalize applicants unable to comply due to unforeseen events, such as labor difficulties. The Commission should maintain some flexibility to allow for changed circumstances which may make installation technically or economically infeasible.

Section 22.163

The Commission's proposal would eliminate the notification requirement for minor changes and for additional transmitter locations within the contours of authorized stations. While this proposal could provide some administrative relief, the Commission should continue to receive notification of such changes. Notification is the only way accurate spectrum use records can be maintained by the Commission and others. USTA recommends that the rules require a licensee to provide the Commission with the updated technical records within sixty days after the minor modification has occurred.

² Notice at paragraphs 19-20.

Section 22.365(b)

The wording of this proposed section should be changed so that in cases where licensees contract for monitoring and maintaining antenna structures, or where licensees contract to use an existing antenna structure, the entity designated in the contract has sole responsibility for the structures. The licensee should provide a copy of the contract to notify the Commission as to which parties have responsibility for maintaining antenna structures.

Section 22.379(d)

USTA believes that equipment replacement should be allowed without Commission authorization, although notification should continue to be required. Further, decreases in effective radiated power and height above average terrain (HAAT) should be allowed with notification to the Commission. Notification should occur within 60 days after the change is completed.

Section 22.535

The Commission seeks comment as to whether the effective radiated power (ERP) limits should be continued to be specified in watts or, alternately, in either DBW or in a fixed percentage.

USTA supports the continued expression of power limits in watts. All of the current and proposed rules and formulas use watts. Design engineers use watts to plan systems and field engineers use a wattmeter to read output power.

The Commission has also requested comment on what the maximum power limits for the Rural Radio Service, including Basic Exchange Telephone Radio Service (BETRS), should be. USTA recommends that the Commission adopt the same maximum power limits for Rural Radio as contained in proposed section 22.565(c).

Section 22.567

USTA supports the Commission's proposal to replace the Carey Report Interference Studies with formulas to ensure that co-channel separation and interference levels are maintained. In general, the proposed formulas correspond to the Carey studies. However, for HAAT of 30 meters or less, there are considerable differences between the Carey studies and the proposed formulas. The Commission may have to address interference levels where the HAAT is below 30 meters on a case-by-case basis.

Section 22.577

USTA agrees with the Commission that if no carriers are providing dispatch service pursuant to Commission rules, the rule should be eliminated.

Section 22.715

USTA opposes limiting BETRS to two radio channels. The number of channels needed for BETRS should be determined by the carrier based on an engineering study including the equipment utilized, the planned grade of service, the number of customers

to be served, and the terrain and the direction of potential interference.

Situations presently exist where the Commission's current allotment of four channels cannot provide customers with the desired grade of service. Implementing a two channel limit would reduce the quality of service and restrict the service to customers in remote areas.

Instead of restricting BETRS to two channels, and requiring carriers to file waivers to request more channels, USTA proposes that the Commission allow BETRS providers to submit traffic engineering studies to justify the need for the appropriate number of channels.

Section 22.901

The Commission is recommending to eliminate the restriction in §22.930 which limits fixed service to BETRS. If this rule is eliminated, carriers seeking to provide other fixed-incidental service would not have to request a waiver in order to do so. USTA opposes the elimination of this section of the rules.

The Communications Act makes a clear distinction between mobile service and exchange service. Congress specifically distinguished the delivery of telephone exchange service from mobile service. By statutory definition, mobile service always involves a radio communication carried to or from at least one

mobile station, whether one-way or two-way. When a cellular operator offers fixed service, it is offering exchange service.

The Commission should not preclude either its own ability or that of the states to identify those carriers who elect to offer fixed service, and to address issues regarding the provision of fixed service in the future.

Without knowing whether or not cellular carriers are offering fixed service, the Commission may be inadvertently giving up resources needed to assess spectrum usage or competitive local market impacts.

Eliminating this section of the current rules will infringe upon state authority. It is settled law that the decision to allow entry into the delivery of telephone exchange service is reserved to the states under the Communications Act.³ The Commission may have authority to address issues relating to cellular mobile transmission standards and spectrum use. However, the Commission is limited in its authority to address questions concerning entry, qualification and direct regulation relating to telephone exchange service. Legitimate state interests exist regarding these issues which the Commission may not circumvent. Elimination of the provision at issue here could result in the creation of two distinct forms of telephone exchange service, one being a state-regulated wireline service,

³ See, 47 USC §§157, 152(b).

the other being a federally-designated radio based local service. Such a result would be contrary to the Communications Act.

For the reasons stated above, USTA urges that this section of the rules be retained.

Revisions to Form 401

USTA has reviewed the proposed revisions to Form 401 and recommends the following. First, item 22 of the original form should be retained. This section, which lists the exhibits, is helpful in assuring that the application is complete and accurate. Second, item 37J on Schedule A of the original form regarding co-channel interference activity should also be retained. This would assure that each applicant verify that co-channel analyses have been addressed. It provides important information regarding interference activities and will assist the Commission in ensuring that applicants comply with the technical assignment criteria.

USTA supports revision of Part 22 of the Commission's rules
consistent with the recommendations contained in these comments.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

By

A handwritten signature in cursive script, appearing to read "Linda Kent", is written over a horizontal line.

Martin T. McCue
General Counsel

Linda Kent
Associate General Counsel

900 19th Street, NW, Suite 800
Washington, D.C. 20006-2105
(202) 835-3100

October 5, 1992